State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

Department of Workforce Services

TANI PACK DOWNING
Executive Director

CHRISTOPHER W. LOVE
Deputy Director

GREGORY B. GARDNER
Deputy Director

September 13, 2006

To: Employment Advisory Council

From: Bill Starks, Unemployment Insurance Director

Subject: Final Follow-up Questions on the Social Security Offset Provisions

The Council requested at our August 24th meeting that the Department provide some additional information with respect to our discussion on the Social Security offset provision. The following is a summary/history of the provision and the Department's responses to your requests. If you have any further questions please feel free to contact me.

History: House Bill 8 of the 2004 General Session provided that only 50 percent of an individual's Social Security (SS) retirement benefit would be used to offset (reduce) an individual's UI benefit entitlement. Prior to the law change, 100 percent of the SS benefits were used to reduce one's potential UI benefit amount. The law was scheduled to sunset after three years. House Bill 18 of the 2006 General Session provided language to extend the sunset provision an additional four years and to codify that all benefit costs attributable to this provision will continue to be charged to Reed Act Funds and employers would not be charged for the increased benefit costs. While benefit costs attributable to this provision have been charged to Reed Act Funds since the original legislation was effective July 1, 2004 the charging provision was not in statute until March 2006.

The Department received "informal" approval from our legislative liaison with the US Department of Labor (USDOL) in early 2004 that the charging provision did not create an issue. However, the Department received a letter dated May 22, 2006 from USDOL indicating that Utah's non-charging provision is not in conformity with the Federal Unemployment Tax Act (FUTA). Section 3303(a)(1) of FUTA provides that state UI tax rates must be assigned under an "experience rating" system. The primary purpose of this system is to equitably allocate the benefit costs of the UI program among those employers who create unemployment. FUTA specifically requires that rates be assigned on a basis that bears a direct relation to the unemployment risk. Thus, with few exceptions, benefits must be charged back to the employer causing the unemployment. USDOL apologized for not identifying this issue when it first arose but has requested Utah to resolve this issue as quickly as possible.

Options: The Council requested that the department survey some states to see if any states are able to fund the SS Offset provision by any other means other than charging the costs attributable to it back to the employers or charging it to "social costs". Many states responded to the survey,

however all states that responded indicated they directly charged the employers for the costs. I also re-contacted USDOL t o research if there was any other option available (including charging the costs to "social costs") that would preserve this benefit while not charging the employers for their share of the benefit costs attributable to this provision. Again, they reiterated that if any state was funding this by non-charging the employers they would also be in violation of federal experience rating laws.

Course of Action:
Since the Council voted to amend the non-conforming charging language in Section 35A-4-401 to be in compliance with federal law the department will present the attached proposed Bill (same as what was presented to the Council 8/24) to the Workforce Services Interim Committee at the September 20th meeting for discussion and sponsorship. Jim Wilson, Legislative Council had previously discussed the issue with Senator Hickman, Senate Chair of the Committee, and a Bill File had already been opened.